UNITED
NATIONS

HRI

International Human Rights Instruments

Distr.
GENERAL

HRI/CORE/1/Add.29
2 July 1993

ENGLISH
Original: FRENCH

CORE DOCUMENT FORMING PART OF THE REPORTS OF STATES PARTIES

SWITZERLAND

[2 June 1993]

CONTENTS

		Paragraphs	Page
Introduction		1 - 3	3
I.	LAND AND PEOPLE	4 - 15	3
II.	GENERAL POLITICAL STRUCTURE	16 - 42	4
	A. Historical background	16 - 20	4
	B. Government structure: federalism	21 - 42	6
III.	GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED	43 - 73	10
	A. Competent human rights authorities and remedies available to a person who claims that his rights have been violated	43 - 53	10
	B. System of compensation and rehabilitation of victims	54 - 57	13
	C. Constitutional protection of the rights provided for in the various international human rights instruments	58 - 66	14
	D. Incorporation of international human rights instruments into internal law	67 - 68	16

GE.93-18197 (E)

CONTENTS (continued)

		Paragraphs	Page
	E. Direct invocability of the provisions of human rights instruments in national courts	69	17
	F. National institutions and agencies with responsibility for guaranteeing respect for human rights	70 - 73	17
IV.	INFORMATION AND PUBLICITY	74 - 78	18

Introduction

1. The Swiss Confederation is a direct democracy with a federal structure. Its territory is composed of the territories of the 26 federated cantons and demi-cantons. There is no exclusively federal district.

2. For historical reasons and in the light of the country's linguistic and religious diversity, the Swiss political system attaches great importance to consensus and gives the cantons considerable autonomy. Switzerland is a permanently neutral State and, in time of peace, conducts a foreign policy of neutrality that determines its position in matters which are not covered by the international law of neutrality, but over which it has direct influence.

3. The Swiss economy is characterized by respect for free enterprise and the importance of international trade. Although it has been affected by a persistent economic crisis in recent years, its standard of living is still one of the highest in the world.

I. LAND AND PEOPLE

4. Swiss territory covers an area of 41,284 km^2. In 1991, Switzerland had a population of 6,872,600, including 5,633,200 Swiss and 1,239,400 foreigners. Approximately 1,091,000 foreigners living in Switzerland are of European origin, 31,088 come from the American continent, 22,320 from Africa and 44,301 from Asia. There are also 250 stateless persons. Foreigners account for 17.4 per cent of the total permanent population (20 per cent of the male population and 15 per cent of the female population).

5. In 1991, 48.9 per cent of the population was male and 51.1 per cent female; 17.4 per cent of the population was under 15 years old and 14.6 per cent was over 65. The under-15s accounted for 16.5 per cent of the female population and 18.2 per cent of the male population. Women aged over 65 account for 17.2 per cent of the female population, while men in that age group account for only 11.9 per cent of the total male population.

6. In late 1991, 50.5 per cent of the resident population lived in towns and cities, whereas 40.5 per cent lived in rural areas. The permanent resident population is composed of all persons who, in principle, live in Swiss territory year round. Seasonal workers, border workers (from abroad), tourists and asylum-seekers are not included in the permanent resident population.

7. About 42 per cent of the population is unmarried and 47.6 per cent married, with widowed and divorced persons accounting for 5.9 and 4.5 per cent of the total, respectively. In 1991, there were 47,567 marriages and 13,627 divorces. The latter figure is constantly increasing and it is estimated that, if the trend continues, 34 per cent of marriages will end in divorce. According to the 1980 census, there are 125,900 women heads of household, i.e. 7.7 per cent of all households.

8. Switzerland has four national languages, German (spoken by 65 per cent of the population), French (18.4 per cent), Italian (9.8 per cent) and Rhaeto-Romansch (0.8 per cent). The first three are the official languages of

the country. About 6 per cent of the population has another mother tongue. Language distribution by sex is as follows: 64.2 per cent of men speak German, 18 per cent French, 10.5 per cent Italian and 0.8 per cent Rhaeto-Romansch. For women, the figures are 65.8 per cent, 18.8 per cent, 9.1 per cent and 0.8 per cent, respectively.

9. With regard to religious denominations, the resident population is 44.3 per cent Protestant, 47.6 per cent Roman Catholic, 0.3 per cent Old Catholic, 0.9 per cent Muslim, 0.6 per cent Orthodox and 0.3 per cent Jewish, while 3.8 per cent is composed of persons who have no religious denomination. There are also some other religions (Mormons, Scientologists, etc.) which are very much in the minority, for which there are no individual statistics and which, taken together, make up about 0.3 per cent of the population.

10. In 1991, the infant mortality rate (death during the first year) was 6.2 per 1,000 births. In that year, 12.7 children were born for every 1,000 inhabitants. The fertility table, which indicates the number of children a woman aged between 15 and 49 would have if she were subject to the fertility rate observed at a particular time, was 1.61 in 1991. In that year, one woman died as a result of pregnancy or childbirth; thus, for 86,200 children born alive during that period, maternal mortality was 1.2 per 100,000 births.

11. The life expectancy of women is 80.9 years and that of men 74.1.

12. For a gross national product of Sw F 346 billion in 1991, average per capita income was about Sw F 43,149 per year.

13. The rate of inflation has increased considerably in recent years. It was only 0.8 per year in 1986, but rose to 3.2 per cent in 1989 and to nearly 5.9 per cent in 1991. There has recently been a downward trend and, in February 1993, the rate of inflation was 3.4 per cent. According to the Swiss National Bank, the annual rate of inflation for 1993 should not be more than 2.5 per cent.

14. The average unemployment rate was 0.6 per cent in 1990. This figure, which includes only unemployed persons registered with a labour office, has increased sharply since then because of the economic recession the country has suffered. It stands at about 4.6 per cent for the first few months of 1993.

15. Since school attendance is compulsory for everyone, no survey is conducted on illiteracy; it may, nevertheless be stated that the number of illiterate persons is very low.

II. GENERAL POLITICAL STRUCTURE

A. Historical background

16. The Helvetic Confederation was born of the perpetual alliance of the "Waldstätten" in 1291 and, until the French Revolution, was no more than a very loose-knit association of rural and urban communities. Relations between the States of the old Confederation were not governed by a Constitution, but by a large number of treaties of alliance. Some parts of Switzerland's

present territory were then only lands conquered by large cantons (such as Vaud, which was subject to the canton of Bern until 1803) or were placed under the joint trusteeship of the first members of the Confederation ("common jurisdiction").

17. On 12 April 1798, after the occupation of the territory of the Confederation by the French troops of the Directoire, the old treaties of alliance were replaced by the Constitution of the Helvetic Republic, which was established in Paris along the lines of the French Republic. However, the very idea of a unitary State, of a Republic one and indivisible, was far too alien to the country's traditions and ways of thinking and, after a brief period of constant crises, the Act of Mediation of 19 February 1803, which was imposed by Bonaparte, marked a return to federalism. The powers of the central Government were limited to foreign policy and the maintenance of law and order and the cantons continued to be sovereign States in all other areas. The weakness of the federal Government of the time was demonstrated by the fact that its highest body, the Federal Diet, was not a permanent executive, but a periodic congress of envoys from each canton.

18. After Napoleon's fall, Switzerland requested the European powers to recognize its independence and its neutrality. The 1815 Vienna Congress accepted this request and, at the same time, Switzerland got back old allied or subject territories which were restored to the Confederation, bringing the number of cantons bound by a treaty of alliance known as the "Federal Pact" to 22. Once again, the Diet assumed the joint tasks which had been delegated to it by the cantons (maintenance of law and order; foreign policy; and diplomatic relations with foreign countries). It had once again been denied broader powers.

19. The French Revolution of July 1830 also unleashed a liberal movement in Switzerland. This period, known as the "Regeneration", marked a renewal of public life. Most of the cantonal constitutions underwent considerable changes with a view to the strengthening of the principles forming the basis for popular sovereignty and representative democracy. These new constitutions, especially the liberal constitutions of some large cantons, were to some extent contrary to the Federal Pact of 1815, with the result that a revision of the Federal Pact and the strengthening of the central Government became necessary. In 1832, the Diet prepared a first draft revision. However, serious divisions paralysed its work for some time and, in 1847, 13 cantons took the initiative of appointing a commission to prepare a new draft. Before this work was completed, a brief civil war (15-25 November 1847) took place between the conservative Catholic cantons, which had concluded a separate alliance ("Sonderbund") and the more liberal Protestant cantons. The liberals' victory enabled the Diet to take note on 12 September 1848 of the fact that the Constitution of the Swiss Confederation had been accepted by a majority of cantons. This new text marked the change from a confederation of sovereign States united by very loose ties to a genuine federal State whose central Government now had broader powers.

20. Twenty years after the entry into force of the new Constitution, however, a further amendment became necessary. The cantons, which had meanwhile increased popular rights in their territories, were demanding that the same

should be done at the federal level. Moreover, international developments, particularly the outbreak of the Franco-German war of 1870-1871, made a further strengthening of the central Government desirable. Efforts to this end were therefore made and, on 19 May 1874, the Federal Assembly brought the current Constitution into force. This Constitution has undergone many partial revisions, but is still in force at the present time.

B. Government structure: federalism

21. Switzerland's history and its multilingualism have made federalism genuinely necessary: experience has shown that the unity of the Helvetic State can be guaranteed only if the diversity of the parties which compose it is safeguarded.

1. Organization of powers within the federal State

22. The main feature of Swiss federalism is recognition of the sovereignty of each canton. Power sharing between the central Government and the cantons is thus based on the principle of attribution: only the powers expressly attributed to it by the Constitution are vested in the Confederation and the cantons are sovereign in so far as their sovereignty is not limited by the Constitution and, as such, they exercise all the rights which are not delegated to the federal Government (art. 3 of the Constitution).

23. Originally, as has been seen, the Confederation had only a few powers, primarily in the fields of foreign relations, defence, arbitration of inter-cantonal conflicts and freedom of trade and industry. With the changeover to a federal State, however, the tasks of the central Government, which became permanent, increased in number and made the division of federal and cantonal powers more complex. Nowadays, some fields are exclusively within the competence of the Confederation. These are, for example, foreign relations, customs, currency, post and telecommunications, the army and legislation relating to atomic energy, animal protection, railways and aviation. Other sectors are exclusively within the competence of the cantons, such as religious worship, the police and social welfare.

24. Because of the coexistence of federal and cantonal legal provisions, there are other areas in which the division of powers is less clear cut. In many cases, lawmaking is done by the Confederation and implementation by the cantons. This is true in the case of civil law, criminal law, social insurance and road traffic. In other areas, such as taxes, sickness insurance and public education, lawmaking power is shared.

25. As may be imagined, situations can be very complex. Public education is but one example. Primary education comes within the exclusive competence of the cantons and, as a result, there is a wide variety of types of instruction and this gives rise to a problem in view of the increasing mobility of people in general and of students in particular. It was only in 1985 that an amendment to the Constitution standardized the date of the start of the school year.

2. Cantons and communes

26. Communes are the smallest political entity of the federal State. Switzerland has 3,000, which vary considerably in size. Their powers are defined by cantonal legislation relating to the organization of communes. They enjoy autonomy, which also varies and the most salient feature of which is sovereignty in matters of taxation. Their organization is not uniform; in many communes, power is still exercised by a communal assembly in which all inhabitants who are entitled to vote may take part, whereas larger communes have a communal parliament. The executive authority is the communal council, sometimes called the municipality, a collegiate body elected by direct popular vote in most cases. There is no judicial body at the communal level.

27. In the hierarchy of the State, which goes from the commune (lower level) up to the Confederation (higher level), the cantons are in the middle and are thus the linchpin of the country's political structure. They are sovereign, except for the powers attributed to the central Government. At present, Switzerland has 26 cantons and demi-cantons. While the Unterwald valley had already been divided into two parts before 1291, a religious dispute led to the split of Appenzell in 1597 and Basel was divided in 1883 following a civil war. On 24 September 1978, moreover, the people and cantons democratically accepted the establishment of the canton of the Jura, whose territory had hitherto been subject to the sovereignty of the canton of Bern.

28. Each canton has its own constitution and legislation. Legislative power is exercised by a unicameral parliament usually elected according to the system of proportional representation. Executive and administrative power is vested in a State council elected by the people for a specific period of time and organized according to the same principles as the Federal Council: the president changes each year and collegiality is the rule. It should nevertheless be noted that, in some cantons, elections of the parliament, the Government, cantonal judges and even lower ranking judicial officials take place by show of hands, as does any vote on a cantonal issue, in the context of citizens' assemblies known as "Landsgemeinde".

29. The cantons are also sovereign with regard to the organization of the courts. Their system is usually headed by a supreme court (cantonal court), which is a criminal court of cassation and of appeal against civil judgements of district courts. The majority of the cantons also have an administrative tribunal. Elsewhere, however, administrative decisions which are appealable are referred to the Government or to appeal commissions that are independent of the administration (the new article 98 (a) of the Federal Court Organization Act nevertheless requires the cantons to establish administrative courts within five years as of January 1992).

30. The political rights of citizens are broader than at the federal level, since the Government is directly elected by the people and, in addition to the right of constitutional initiative, which is possible only in federal law, many cantons have the right of legislative initiative enabling a certain number of citizens to request a popular vote on the amendment of the law.

3. Organization of federal powers

(a) The executive power: the Federal Council

31. The Federal Council is a governmental college composed of seven members who have equal powers. Each member is elected independently by the Federal Parliament for four years; he may be re-elected indefinitely. In practice, re-election is the rule, thus ensuring the continuity and stability of Swiss policy, particularly as neither the Federal Council nor any of its members may be deposed by the Parliament. This principle is reflected in the saying "Federal Council submits, but does not resign".

32. Each year, the Federal Assembly chooses one of the seven federal councillors as President. As a mere primus inter pares, he does not have any special powers, but his main role is to chair Government meetings and to assume representation functions.

33. Each federal councillor is the head of a department (ministry), whose interests he represents in the Government college. As a collegiate body, the Federal Council takes its decisions only by consensus or by a simple majority, and each member assumes responsibility for joint decisions.

34. As a result of its composition, the Federal Council represents a subtle linguistic, religious, regional and political balance. The Constitution prohibits more than one representative of the same canton from being members of the Federal Council at the same time. In addition, the tradition is that the Latin (French and Italian) minority should always have at least two representatives in the Federal Council and that the large cantons (Zurich, Bern and Vaud) should in principle be represented in it. Since 1959, a political compromise known as the "magic formula" has ensured the country's four largest political parties, i.e. the Radicals, Christian Democrats and Socialists (two representatives each) and the Democratic Union of the Centre (one representative), a permanent place in the Federal Council.

35. The Federal Council exercises the traditional executive functions (art. 102 of the Constitution): political management and development of the country; maintenance of law and order. It monitors respect for and the implementation of the Constitution, the laws and the judgements of the Federal Tribunal and, as appropriate, takes the necessary measures for their enforcement. In the few cases that the Constitution removes from the jurisdiction of the Federal Tribunal, the Federal Council is the supreme appeal authority. Its role as head of State makes it the representative of Switzerland abroad and the guardian of the interests of the Confederation; it also ratifies the international treaties adopted by the Federal Chambers. It should be noted that, according to well-established practice, some treaties may be concluded without parliamentary approval; this is true of those which only give the Confederation rights without imposing any obligations on it, those which are concluded on the basis of an express authorization given in advance by the Federal Assembly, those which serve only to enforce other treaties that have already been adopted, those which are temporary and urgent and those which, in internal law, come within the regulatory jurisdiction of the Federal Council.

(b) Legislative power: the Federal Assembly

36. Switzerland's system of a bicameral parliament is the direct result of federalism. The Council of States and the National Council form the Federal Assembly. The Council of States is composed of two representatives of each canton (the demi-cantons each have one seat), regardless of its size and its population. The National Council is composed of 200 peoples' deputies whose terms of office are divided among the cantons in proportion to the number of inhabitants they have. Although the way the councillors are elected to the Council of States is decided by each canton (they have generally opted for a majority vote, the canton of the Jura being the only exception), the members of the National Council are uniformly elected by proportional vote.

37. A legislative term of office lasts four years. The Chambers hold four regular sessions each year. The two Chambers have the same rights and any draft legislation or decision has to be accepted by both of them in order to enter into force. If the consideration of such a draft gives rise to differences of opinion between the Chambers, they keep referring it back to each another until a joint text can be adopted ("shuttle" procedure). The Chambers also have jurisdiction to authorize the Federal Council to ratify international treaties.

38. In joint session, the Federal Assembly elects the Federal Councillors, the President and the Chancellor of the Confederation, federal judges and, in time of war, a General Commander-in-Chief of the Army. It also closely monitors the federal administration, approves the Confederation's budget and accounts and allocates the necessary funds for new purposes.

39. The legislative texts adopted as a result of parliamentary debates are not final because the Constitution has recognized the right of popular referendum since 1874. Thus, if, within three months of the adoption of a law by the Federal Chambers, 50,000 valid signatures are collected from voters who would like the new provisions to be approved by the people, these provisions have to be voted on by the people and cannot enter into force unless a majority of citizens who have taken part in the voting so decide. The same happens at the request of eight cantons or in accordance with a decision of the Federal Chambers (art. 89, paras. 2 and 4, of the Constitution). Consequently, a law enters into force only after the three month referendum period at the earliest. In addition to general federal laws and decisions, the referendum applies to international treaties which are not subject to denunciation and are concluded for an unspecified period of time, as well as those which provide for membership of an international organization or lead to the multilateral unification of the law (art. 89, para. 3, of the Constitution). A constitutional amendment and membership of collective security organizations or supranational communities are subject in all cases to the dual consent of the people and the cantons (compulsory referendum, art. 89, para. 5, of the Constitution).

40. Since 1891, the Constitution has also recognized the right of popular initiative to propose the full or partial amendment of the Constitution (art. 121 of the Constitution). For this purpose 100,000 citizens' signatures must be collected within a period of 18 months. The Parliament cannot object to the submission of a popular initiative to the vote, except to declare it

inadmissible as a result of a procedural defect or null and void as a result of a violation of international law (this has never happened). Since an initiative can relate only to constitutional amendments, it must have the dual consent of the people and the cantons in order to be adopted.

(c) The judiciary: the Federal Tribunal

41. The Federal Tribunal is the highest judicial authority in the country. It is composed of 30 judges and 15 associate judges and sits in Lausanne. The Federal Insurance Court sits in Lucerne. Within the Federal Tribunal, there are two public law courts and two civil law courts, a debt recovery and bankruptcy chamber, a court of cassation and a special court of cassation, an indictment division, a criminal division and a federal penal court.

42. The Federal Tribunal guarantees respect for federal law in criminal, civil and administrative matters. However, it does not have jurisdiction to monitor respect for cantonal law, except in the event of a violation of a constitutional principle guaranteeing a fundamental human right, for example. In ruling in last instance on the decisions of the cantonal courts referred to it, the Federal Tribunal helps to ensure that cantonal laws are in keeping with federal law and that federal law is uniformly applied.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Competent human rights authorities and remedies available to a person who claims that his rights have been violated

43. The federal structure implies the complex overlapping of the powers of the confederation and the cantons in this area. If criminal and civil law (including commercial law) are taken together, their enforcement is primarily the responsibility of the cantons, which are sovereign to decide on judicial organization and, to a large extent, procedure. Administrative law may be either cantonal or federal. In general, violations of human rights are actionable in Switzerland in the ordinary civil, criminal or administrative courts. Administrative courts do not yet exist in all cantons, which are henceforth required to establish them by the new article 98 (a) of the Federal Judicial Organization Act (referred to below as OJF, annexed hereto 1/). When necessary, they are replaced by an executive authority or an independent appeals commission.

1. Criminal matters

44. Although substantive criminal law was unified by the Swiss Penal Code of 21 December 1937, its enforcement and procedure are primarily the responsibility of the cantons; Switzerland thus does not have one single system of criminal justice, but, rather, 26 different systems. In view of this diversity, only the main features that are the same for all cantons will be described below.

1/ The annexes referred to in this document may be consulted in the files of the Centre for Human Rights, in the original language, as submitted by the Government of Switzerland.

45. The system of criminal justice comes into play when an offence is discovered by the competent authority (usually the police) or reported to it. The authority then has to institute proceedings and start an investigation. If the probable perpetrator is identified, the case is referred to the examining magistrate; if not, the proceedings are suspended at this stage. The examining magistrate then has to identify the ingredients of the offence and decide whether the accused should be placed in pre-trial detention, which is, however, still the exception. If there is sufficient evidence, the authority brings charges and, if not, the investigation ends with a dismissal. From then on, the courts of first instance and, on appeal, the cantonal courts of cassation have jurisdiction to determine the guilt of the accused and, as appropriate, the penalty to be imposed. Except where a case is brought before the European Commission of Human Rights for a violation of the European Convention on Human Rights, the final decision is made by the Court of Cassation of the Federal Tribunal.

46. Some serious offences (such as cases of high treason or offences involving the use of explosives) are exclusively within federal jurisdiction (Federal Penal Court or Assize Court, arts. 340 to 342 of the Penal Code, annexed hereto 1/). These courts apply the Federal Penal Procedure Act of 15 June 1934. Appeals are heard by the Special Court of Cassation of the Federal Tribunal.

47. Serving members of the military and officials and employees of the Confederation and the cantons whose acts relate to national defence, as well as civilians guilty of offences against international law during an armed conflict, are subject to military law and the military courts, provided that such acts are punishable under the Military Penal Code (these are not a special law or special courts, since the procedure followed is very similar to that of the civil courts). These persons may, however, be tried by civil courts for offences not provided for by the Military Penal Code of 13 June 1927.

48. The cantons designate the authorities which are competent to deal with children and adolescents, as well as the procedure to be followed (arts. 369 to 371 of the Penal Code). The applicable substantive law is contained in Title Four of the Penal Code and appeals may be made to the Court of Cassation of the Federal Tribunal.

49. Since the adoption on 22 March 1974 of the Federal Administrative Criminal Law Act, the Federal Government has been competent to investigate and try offences against the penal provisions of the administrative laws of the Confederation. However, whenever the department concerned is of the opinion that there should be a penalty or term of imprisonment, the case file is transmitted to the cantonal prosecutor's office for the attention of the competent court. Any person affected by a criminal ruling by the Federal Government may ask to be tried by a court.

2. Civil matters

50. Jurisdiction in this regard belongs in first instance to the district courts, which apply the cantonal procedure. On appeal, disputes are settled by the cantonal courts and the Federal Tribunal (action for annulment).

According to article 41 (b) of the OJF, annexed hereto, 1/ the Federal Tribunal is the sole court, apart from the exceptions referred to in that article, to hear criminal indemnity actions brought by private individuals against the Confederation when the value in dispute is at least Sw F 8,000. Other disputes may also be referred to it in sole instance, but only with the express agreement of the parties (arts. 41 (c)) and 42 of the OJF). In such cases, it applies the Federal Civil Procedure Act of 4 December 1947.

3. Administrative matters

51. At the cantonal level, decisions taken by the Government may usually be appealed to an executive body, an independent appeals commission or an administrative tribunal. When such decisions, whether taken by a cantonal authority or by a federal authority, are based on federal law, they are in principle tried in last instance by the Federal Tribunal by means of the "administrative law remedy". The OJF nevertheless rules out this possibility for a number of disputes, which are then heard in last instance by the Federal Council. There are, however, federal appeals commissions whose decisions are final (such as the Swiss Commission on Applications for Asylum).

4. Violations of fundamental rights

52. In addition to the above-mentioned administrative law remedy, the main legal remedy available to a person claiming that his fundamental rights have been violated is an application for a "public law remedy" filed with the Federal Tribunal. This remedy, which is of a subsidiary nature, since it is admissible only if other remedies are possible, including the action for annulment filed with the Court of Criminal Cassation, civil actions for annulment and the administrative law remedy, is intended mainly as a means of appealing decisions of the cantonal authorities based on federal or cantonal law for violations of constitutional rights or directly applicable provisions contained in international human rights conventions. The relevant provisions of the OJF read as follows:

> "Article 84:
>
> (1) An action may be applied for in the Federal Tribunal for a remedy against a cantonal decision or judgement for a violation of:
>
> (a) Constitutional rights of citizens;
>
> (b) ...
>
> (c) International treaties, except in the case of a violation of their civil law or criminal law provisions by a cantonal decision;
>
> (d) ...
>
> Article 85:
>
> The Federal Tribunal also hears:

(a) Actions in respect of the right of citizens to vote and rights relating to cantonal elections and voting;

Article 86:

(1) ...

(2) Actions for violations of the constitutional rights of citizens are admissible only after cantonal remedies have been exhausted;

(4) Actions for violations of directly applicable provisions of multilateral conventions for the protection of human rights and fundamental freedoms are admissible only after cantonal remedies have been exhausted."

53. There is an important restriction on the power of the Federal Tribunal to consider public law remedies. Article 113, paragraph 1 (3), of the Constitution requires it to apply, in every case, the general federal laws and decisions adopted by the Federal Assembly, as well as the treaties it has ratified. This provision, which is democratically inspired, since it is designed to prevent a court from declaring unconstitutional a text which has been submitted to an optional popular referendum and accepted by the people, even tacitly, nevertheless hampers the monitoring of the constitutionality of federal laws and their conformity with basic constitutional rights. It may thus be said that there is no full federal constitutional monitoring. The rule embodied in article 113 of the Constitution does not, however, prevent the Federal Tribunal from finding that a federal law is incompatible with the Constitution, thus prompting the lawmakers to remedy the situation.

B. System of compensation and rehabilitation of victims

54. A person who considers that he has been a victim of a violation of his rights may take legal action on the basis of the remedies described above and the procedures and judicial organization of the canton concerned. Criminal indemnity actions and appeals against administrative decisions are usually intended to obtain compensation for loss or injury (restitution, annulment of the administrative decision, compensation, moral damages) or a determination that the rights in question have been violated (action for a de jure determination). In principle, criminal indemnity actions against Government authorities come under the ordinary regime; however the cantons are free to enact special laws on the responsibility of cantonal authorities. As seen above, the Federal Tribunal sits alone in hearing criminal indemnity actions against the Confederation when the value in dispute is at least Sw F 8,000. There are special federal laws relating to the responsibility of Government bodies, such as the Federal Law of 14 March 1858 on the Responsibility of the Confederation, the Federal Law of 28 March 1905 on the Civil Liability of the Railways, Steamships and Postal Service and the Federal Law of 18 March 1983 on Civil Liability in Matters Relating to Nuclear Energy.

55. In criminal cases, the existence of criminal indemnification proceedings enables the victim of an offence or a crime to take part in the proceedings to assert his civil rights. When the act was committed by a Government official, the official's personal responsibility and that of the State may be engaged.

For reasons of solvency, Swiss law allows the victim or his beneficiaries to take proceedings directly against the Government. In some cases, it even makes it an obligation for the victim to do so (art. 3 of the Federal Law on the Responsibility of the Confederation).

56. In military cases, when the offence is punishable by the Military Penal Code, articles 163 and 164 of the Federal Law on Military Penal Procedure enable the victim to request compensation from the military courts.

57. With regard to assistance for the victims of criminal offences, it should be noted that the Federal Law on Assistance to Victims of Offences entered into force on 1 January 1993. Its purpose is to provide effective assistance to the victims of direct violations of their bodily, sexual or mental integrity, as well as to their families, whether or not the offender has been discovered and whether or not his conduct was wrongful. This new law provides that assistance includes counselling by cantonal guidance centres; the protection of the victim and his rights in criminal proceedings (measures to prevent any unnecessary publicity that is harmful to the victim; right to take part in the proceedings and submit criminal indemnity claims; right of appeal if the sentence affects such claims or the way in which they may be judged); and, in some circumstances, compensation and moral damages.

C. Constitutional protection of the rights provided for in the various international human rights instruments

58. In Swiss law, there is no separate declaration or charter listing the fundamental rights guaranteed by international conventions. Most of these rights are embodied in the 1874 Constitution or derived therefrom by the decisions of the Federal Tribunal; in that case, reference is made to "unwritten constitutional rights".

59. The Constitution expressly provides for:

The principle of equality before the law and the abolition of privileges (art. 4, para. 1);

The principle of equality between men and women (art. 4, para. 2);

Protection of the right of ownership (art. 22 ter);

Freedom of trade and industry (art. 31);

The political rights of citizens (art. 43);

Freedom of establishment of citizens in any part of the national territory (art. 45);

Freedom of conscience and belief (art. 49);

Freedom of worship (art. 50);

The right to marry (art. 54);

Freedom of the press (art. 55);

Freedom of association (art. 56);

The right to due process of law and the prohibition of special courts (art. 58);

The prohibition of corporal punishment (art. 65, para. 2);

The abolition of the death penalty for political crimes (art. 65, para. 1, made applicable by amendment of the Penal Code and the Military Penal Code to any death sentence);

The prohibition of imprisonment for contractual debts (art. 59, para. 3).

Since the Constitution dates back to 1874, the freedoms it guarantees have been adapted by court decisions. Over time, a relatively full set of case law relating to procedural and legal guarantees has been developed on the basis of the principle of equality embodied in article 4.

60. The Federal Tribunal has also derived the following "unwritten" rights from the interpretation of the Constitution:

Freedom of expression;

Freedom of person;

Freedom of language;

Freedom of assembly.

61. Since each canton has its own constitution, lists of fundamental freedoms also exist at the cantonal level. The Federal Tribunal regards them as autonomous only in the very rare case where the protection they offer goes beyond that afforded by written or unwritten federal constitutional law.

62. It should also be noted that the substantive provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (which entered into force for Switzerland on 28 November 1974) supplement the above-mentioned constitutional rights by guaranteeing fuller protection of the individual (see, for example, Federal Tribunal decisions (ATF) 101 la 67 and 106 1a 35).

63. Although the Constitution places specific limitations on certain constitutional rights in accordance with the public interest, legal provisions and respect for the principle of proportionality (for example, the protection of the right of ownership does not prevent lawful expropriations), it does not provide for the possibility of a general derogation from the rights it guarantees.

64. In this connection, however, mention must be made of article 89 bis of the Constitution, which, in the event of necessity, allows the urgent implementation of federal decisions derogating from the Constitution, provided

that the people and cantons ratify them within one year from their implementation. This provision, which was adopted in 1949 following the Second World War, is designed to strike a balance between the need to give the Federal Government the necessary powers in the event of a serious crisis or threat to the country and the guarantees required to prevent abuses in the exercise of such increased power and to limit the restriction of democratic rights. Depending on the procedure defined and in the event of a state of necessity, this provision means that through urgent federal decisions, the exercise of some democratic or fundamental rights may be restricted or suspended for a limited period of time.

65. Although there usually has to be a legal basis for any restriction on the exercise of an individual freedom, the principle of "general police power" enables the authorities to issue orders or take individual decisions without any legal basis whenever the exercise of that freedom constitutes a grave and imminent danger to, or actually disturbs, public order. This power is based on article 2, paragraphs 9 and 10, of the Constitution (authorizing the Federal Council to guarantee Switzerland's internal and external security and the maintenance of order and tranquillity) or the unwritten constitutional rule known as the "general police clause". In order to prevent abuses and any violation of the principle of the rule of law, the Federal Tribunal carefully monitors the way this power is used (ATF 100 la 579/580).

66. Since 1974, any derogation from fundamental freedoms must be in keeping with the requirements of article 15 of the European Convention on Human Rights.

D. Incorporation of international human rights instruments into internal law

67. Switzerland is a country with a monist tradition: an international treaty ratified by the Federal Council (sometimes on its own initiative, but usually with the authorization of the Parliament or after a vote by the people or by the people and cantons; see paras. 35 to 39 above) forms part of federal law from the time of its entry into force for Switzerland without any need for it to be incorporated in the internal legal system through the adoption of a special law. This principle is unchallenged; it may be deduced from article 113, paragraph 1 (3), of the Constitution, which requires the Federal Tribunal to apply, in all cases, the federal laws and the treaties ratified by the federal authorities. Such a treaty is obviously an obligation under international law for the Swiss authorities.

68. Despite a few decisions to the contrary, the Federal Tribunal has, in its recent decisions, established the primacy of international law over internal law (ATF 106 1b 402 and ATF 109 1b 173). This is also the official position of the Federal Government. (See the joint ruling of the Federal Justice Office and the Public International Law Department on the relationship between international law and internal law within the Swiss legal system, dated 26 April 1989, annexed hereto, 1/ which the Federal Council expressly endorsed in its message of 18 May 1992 on the adoption of the Treaty on the European Economic Area.)

E. Direct invocability of the provisions of human rights instruments in national courts

69. To say that properly ratified international treaties immediately form part of the Swiss legal system and constitute an international obligation for the authorities does not necessarily mean that the rules they contain are directly applicable by national courts and may validly be invoked before them. An international treaty may contain "programme" provisions or provisions which merely establish the general framework of the subject-matter of the treaty; still others set objectives and leave the States parties a great deal of freedom in deciding how they should be achieved. Such rules are not directly applicable, but require the adoption of provisions of internal law to give effect to them. In other words, they are not self-executing. According to the decisions of the Federal Tribunal, a rule contained in an international human rights convention ratified by Switzerland cannot be directly invoked by a citizen unless, in the context and in the light of the object and purpose of the convention, it is unconditional and specific enough (i) to have a direct effect; (ii) to be applied as such to a particular case; and (iii) to serve as the basis for a concrete decision (see ATF 112 Ib 184). In the final analysis, the courts decide in particular cases whether such a treaty provision is self-executing.

F. National institutions and agencies with responsibility for guaranteeing respect for human rights

70. At the federal and cantonal levels, there are various official bodies whose responsibilities relate to the protection of human rights in specific areas. Particular reference should be made to the Federal Advisory Commission for the Problem of Foreigners and the Federal Refugee Commission, as well as the Office of Equality between Men and Women in the Federal Department of the Interior, which has its counterpart in many cantons.

71. A plan to establish a federal commission on racism is under review in connection with Switzerland's accession in 1993 to the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965.

72. Posts of "ombudsman" to provide assistance to private individuals in their relations with the administration have been established by the cities of Zurich and Winterthur and the cantons of Zurich, Basel-Town and Basel-Country. The city of Bern will establish such a post shortly. At the federal level, a plan for an "ombudsman", whose tasks would be to provide citizens with information on remedies available in their disputes with the federal Government, shed light on the facts and try to bring about conciliation, without, however, having any decision-making power, will be submitted to the Parliament shortly. Its terms of reference might include questions relating to action to combat racism.

73. In general, respect for and the protection of human rights is the responsibility of all Government authorities, both cantonal and federal, and, in particular, of the police and the courts.

IV. INFORMATION AND PUBLICITY

74. When the Federal Council plans to ratify a convention, it sets in motion a procedure for consultation with the main interested circles (political parties, cantons, universities, non-governmental organizations, etc.). On this basis, it decides whether it should propose that the Parliament should adopt the treaty. In such a case, it publishes a message for the attention of the Federal Assembly on the scope and consequences of such a commitment. This message is published in the Feuille fédérale (Official Journal of the Confederation) and is thus accessible to interested members of the public. The parliamentary debates on the question are given some publicity in the newspapers and on radio and television; apart from these debates, the ratification of a convention is often the topic of discussions in meetings, workshops and seminars organized by the universities and in schools.

75. Upon ratification, every convention, including those relating to human rights, is published in the Official Compendium of the Confederation and in the Systematic Compendium of Federal Laws in the three official languages, German, French and Italian. Thus and, as in the case of all federal laws, these treaties are known to the competent human rights authorities and are easily available to all citizens. In view of their importance, some texts are publicized specially. This was the case of the Universal Declaration of Human Rights, which was published in the Feuille fédérale as an annex to the 1982 report on Swiss human rights policy and translated into the fourth national language, Rhaeto-Romansch, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which was published in the Feuille fédérale (in the three official languages) in 1988 on the occasion of the fortieth anniversary of the Universal Declaration of Human Rights.

76. Account should also be taken of the role of non-governmental organizations, several of which receive financial assistance from the Confederation, in the dissemination of human rights conventions in Switzerland and abroad, through publications, seminars and activities designed to increase the awareness of national and international public opinion.

77. Reports to be submitted to human rights treaty monitoring bodies are prepared in cooperation with the federal and cantonal Government authorities concerned, with the coordination of the Human Rights Section, Public International Law Department, Federal Department of Foreign Affairs. Non-governmental organizations and other outside bodies may be consulted on some points. If reports have not been the subject of a genuine public debate before they are submitted, the opinion of interested circles (including parliamentary commissions) is often requested.

78. The Federal Council is also considering the possibility of publishing the results of the consideration of Swiss reports by the competent international bodies, thus making a contribution to public debate on the situation, changes and problems with regard to the protection of human rights in Switzerland.